

BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

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IN RE: *Petition for Exemption of Certain
Services*

) Docket No. 03-00391
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**COMMENTS OF AT&T COMMUNICATIONS OF THE SOUTH CENTRAL STATES,
LLC**

AT&T Communications of the South Central States, LLC ("AT&T") submits the following Comments in response to the request of BellSouth Telecommunications, Inc. ("BellSouth") to exempt BellSouth's intraLATA toll services from certain regulatory requirements pursuant to T.C.A. § 65-5-208(b). Specifically, BellSouth asks the Tennessee Regulatory Authority ("Authority") to "exempt intraLATA toll service from regulatory requirements such that intraLATA toll service would be treated just as interLATA toll service is currently treated by the Authority." See "BellSouth's Proposal Regarding Procedural Schedule," filed December 18, 2003, at 2 ("BellSouth's Proposal"); See also "Petition For Exemption of Certain Services," filed June 16, 2003.

AT&T does not oppose BellSouth's request for limited deregulation of intraLATA toll rates as long as (1) BellSouth continues to file intraLATA toll tariffs under the time limits applicable to incumbent local exchange carriers and (2) BellSouth's intraLATA toll service remains subject to all applicable Authority rules and statutes other than the price cap restrictions set forth in T.C.A. § 65-5-209. AT&T believes that these limitations are not materially inconsistent with BellSouth's requested relief.

Current Regulation of InterLATA Toll Service

To understand BellSouth's request, it is necessary to review how interLATA toll service is regulated. Three years ago, the General Assembly enacted what is now codified as T.C.A. § 65-4-101(a)(9). That provision exempts "interexchange carriers" from two statutes: T.C.A. § 65-5-201 (which grants the Authority the power "to fix just and reasonable rates") and T.C.A. § 65-5-203 (which states that the Authority may suspend, reject, or modify any proposed tariff changes.) Otherwise, all statutory requirements and rules, including applicable tariff filing requirements, still apply to interLATA toll services. Thus, interexchange carriers are still required to file tariffs, but the Authority no longer has the power to suspend, reject or modify those tariff filings.¹

BellSouth's Request

In BellSouth's request, BellSouth explained that, if its request regarding intraLATA toll is granted, "parties offering interLATA toll service would file information tariffs, but the price for such service would not be subject to TRA regulation." "BellSouth's Proposal" at 2. BellSouth further stated that the same "filing time periods" would apply to both intraLATA and interLATA tariffs and that BellSouth "does not seek any further exemptions relating to the treatment of intraLATA toll service." *Id.* BellSouth does not mention any specific, statutory exemptions.

Analysis

BellSouth's request is presumably intended to remove intraLATA toll service from the restrictions of the "price regulation plan" set forth in T.C.A. § 65-5-209. BellSouth would still

¹ Under the Authority's rules for interexchange carriers, price increases and proposed changes in the terms and conditions of service must be filed thirty days prior to the proposed effective date. Price reductions and tariffs to introduce new services become effective on the date filed. See Rules 1220-4-2-.55(2)(d) and (e).

file tariffs for intraLATA toll service² and would be required to follow those tariffs. Thus, the tariffs would be legally binding, as they are for interexchange carriers, and not purely “informational.” BellSouth would also remain subject to all other applicable statutes, including the provisions of T.C.A. § 65-5-208(c) and (d).

For example, BellSouth is required by T.C.A. § 65-5-208(c) not to charge less than a “price floor” for its retail services. The “price floor” is equal to the carrier’s tariffed rates for “essential elements” used by competing carriers “plus the total long-run incremental cost of the competitive elements of the service.” As applied to BellSouth’s intraLATA toll service, this statute would prohibit BellSouth from charging intraLATA rates that are less than the carrier’s access rates plus BellSouth’s long-run incremental cost of providing intraLATA service. BellSouth would also be prohibited from “cross-subsidization, preferences to competitive services or affiliated entities, predatory pricing, price squeezing, price discrimination, tying arrangements or other anti-competitive practices.” T.C.A. § 65-5-208(c).

BellSouth’s request for partial deregulation under T.C.A. § 65-5-208(b) is the first time that a carrier has sought relief pursuant to that provision. Therefore, the Authority should proceed carefully in spelling out precisely what burden of proof the carrier must meet and the parameters of the relief granted. The statute requires “notice” and “the opportunity for a hearing” to examine whether “existing and potential competition” is “an effective regulator of the price” of the exempt service. Normally, that would require a detailed, market-by-market analysis of competitive conditions across the state.

While AT&T remains neutral as to whether BellSouth should be granted relief in this case, AT&T does not believe that it is necessary to have an evidentiary hearing to investigate

² Under the Authority’s current rules, all tariffs filed by incumbent local exchange carriers must be filed thirty days prior to the effective date. See Rules 1220-4- 02 through .06

“existing and potential competition” in the intraLATA toll market within the BellSouth service area.³ Unlike BellSouth’s other telecommunications services, the intraLATA toll market has progressed to the point that it can be considered open to competition, exemplifying a successful regulatory effort. At divestiture in 1982, Local Access and Transport Areas (“LATAs”) were created, *inter alia*, to delineate geographic areas within which the Regional Bell Operating Companies (“RBOCs”) would hold the exclusive right to offer long distance service. Over time, as AT&T and other carriers demonstrated the benefits of long distance competition, regulators determined that allowing competition in the intraLATA toll market would be in the public interest. In a series of orders issued in the late 1980s, the Tennessee Public Service Commission took that step, directing BellSouth to implement intraLATA equal access, requiring the carrier to install the equipment, make the programming changes and take the steps that would make this possible in the same way that existing interLATA competition occurs. The existing Primary Interexchange Carrier (“PIC”) change process, which electronically and seamlessly transfers customers who want to change carriers, was readily adapted for the intraLATA market. This resulted in a regulatory success story, for today, large numbers of customers can — and do — switch from one toll carrier to another at minimal expense and with no interruption of service. These factors, among others, readily distinguish BellSouth’s intraLATA toll service from the carrier’s other services.

Although AT&T believes it is not necessary to conduct an evidentiary hearing on the state of competition in the intraLATA toll market, that does not diminish the Authority’s obligation to carefully tailor any relief granted to BellSouth. As previously discussed, the Authority must continue to enforce the statutory pricing and pro-competitive provisions in

³ AT&T takes no position on whether a hearing is needed to address other issues, such as those raised by the Consumer Advocate Division.

Section 208(c) and must retain the power to suspend, modify, or reject a BellSouth tariff which is inconsistent with those provisions or with other statutory requirements which would continue to apply. In other words, the Authority cannot surrender its power to suspend, modify, or reject an illegal tariff. It can, however, grant BellSouth relief from the price cap statute without giving up the agency's other enforcement powers.⁴

As AT&T understands BellSouth's modified request (see footnote four), the only aspect of BellSouth's request which AT&T opposes concerns the timing of filing tariffs. As previously noted, the Authority's rules provide that price reductions filed by Interexchange Carriers ("IXCs") may become effective when filed. Price reductions filed by incumbent local exchange carriers, however, must be filed thirty days in advance. That time period allows the Authority and competitors to determine whether the proposed reduction is consistent with the "price floor" provisions and the other pricing restrictions set forth in T.C.A. § 65-5-208(c). Those provisions, of course, do not apply to IXCs. Therefore, because of BellSouth's status as an incumbent, local exchange provider and the Authority's continuing duty to enforce the pro-competitive pricing requirements set forth in Section 208(c), the Authority should continue to require BellSouth to file tariffs for intraLATA toll services in accordance with the current rules applicable to incumbent local exchange carriers.

Conclusion

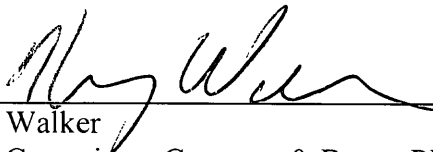
For these reasons, AT&T does not oppose BellSouth's request for limited deregulation of intraLATA toll rates as long as (1) BellSouth continues to file intraLATA toll tariffs under the

⁴ AT&T did not interpret BellSouth's modified request to mean that BellSouth was asking for the agency to surrender its ability to suspend, modify, or reject tariffs. That would make it impossible for the agency to enforce the provisions of Section 208(c). AT&T believes that what BellSouth is actually seeking is the same pricing flexibility that Interexchange Carriers have to adjust rates without regulatory restrictions. The only difference between how the carriers are regulated arises from those statutory requirements, such as Section 208(c), which only apply to incumbent local exchange carriers.

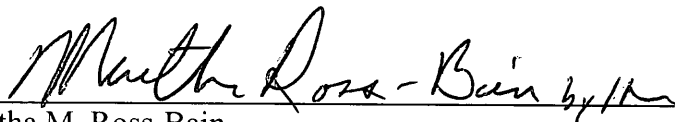
time limits applicable to incumbent local exchange carriers and (2) BellSouth's intraLATA toll service remains subject to all applicable Authority rules and statutes other than the price cap restrictions set forth in T.C.A. § 65-5-209.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing is being forwarded via U.S. Mail, to:

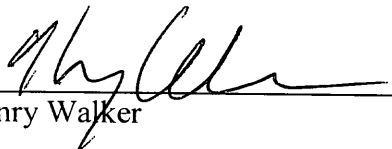
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on this the 12th day of January, 2004.



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